

§ 709.21

(4) If the Program Manager denies the individual's access and the individual is an applicant for employment, assignment, or detail to one of the positions described in 709.4(a)(1)–(8), DOE and its contractors may refuse to employ, assign or detail the individual to the identified position.

(5) If the Program Manager revokes the access of an individual assigned or detailed to DOE, DOE may remove the individual from access to the information that justified the polygraph examination and return the individual to the agency of origin.

(6) If the Program Manager denies or revokes the access for an individual applying for a DOE access authorization or already holding a DOE access authorization, DOE may initiate an administrative review of the individual's clearance eligibility under the DOE regulations governing eligibility for a security clearance at 10 CFR part 710.

(7) For cases involving a question of loyalty to the United States, DOE may refer the matter to the FBI as required by section 145d of the AEA.

(e) DOE and contractor employees, applicants for employment, and other individuals assigned or detailed to Federal positions within DOE whose access to the categories described in § 709.4(a)(1)–(8) is denied or revoked may request reconsideration by the relevant head of the departmental element, as identified in the notice of denial or revocation. Individuals who decline to take the counterintelligence scope polygraph examination will not be afforded these reconsideration rights.

(f) Utilizing the DOE security criteria used to grant or deny access to classified information, OCI will make a determination whether an individual completing a counterintelligence polygraph examination has made disclosures that warrant referral, as appropriate, to the Office of Security and Emergency Operations or the Manager of the applicable Operations Office. OCI will not report minor security infractions that do not create a serious question as to the individual's eligibility for a personnel security clearance.

10 CFR Ch. III (1–1–04 Edition)

Subpart C—Safeguarding Privacy and Employee Rights

§ 709.21 When is an individual notified that a polygraph examination is scheduled?

When a polygraph examination is scheduled, DOE must notify the individual, in writing, of the date, time, and place of the polygraph examination, and the individual's right to obtain and consult with legal counsel or to secure another representative prior to the examination. DOE must provide a copy of this part to the individual. The individual must receive the notification at least ten days, excluding weekend days and holidays, before the time of the examination except when good cause is shown or when the individual waives the advance notice provision.

§ 709.22 What rights to counsel or other representation does an individual have?

(a) At the individual's own expense, an individual has the right to obtain and consult with legal counsel or another representative prior to the polygraph examination. The counsel or representative may not be present during the polygraph examination. No one other than the individual and the examiner may be present in the examination room during the polygraph examination.

(b) At the individual's own expense, an individual has the right to obtain and consult with legal counsel or another representative at any time during an interview conducted in accordance with § 709.15(c).

§ 709.23 How does DOE obtain an individual's consent to a polygraph examination?

DOE may not administer a polygraph examination unless DOE has:

(a) Notified the individual of the polygraph examination in writing in accordance with § 709.21; and

(b) Obtained written consent from the individual.